

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

BERTHA'S MARKETING and BERTHA
MANZO,

Defendants.

NO. CR-03-2225-EFS
NO. CR-03-2226-EFS

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS CASE AND
RESETTING TRIAL**

Previously the Court entered an Order Denying In Part and Holding in Abeyance in Part Defendants' Motion to Dismiss Case, (Ct. Rec. 77). The Court reserved ruling on two legal issues: whether the Second Superseding Indictment sufficiently stated deprivation of a valid property interest of the Mexican Government and whether the United States can prosecute a fraudulent scheme to evade payment of foreign tariffs under 18 U.S.C. § 1343, awaiting a decision from the U.S. Supreme Court in *United States v. Pasquantino*. On April 26, 2005, the Supreme Court issued a decision in *Pasquantino*, No. 03-0725 (S. Ct. filed April 26, 2005), ruling that a plot to defraud a foreign government, Canada, of tax revenue violates the federal wire fraud statute and that the scheme of smuggling liquor into Canada from the United States without paying

1 Canadian liquor taxes deprived the Canadian government of a property
2 interest.

3 The Court finds the Second Superseding Indictment sufficiently
4 alleges that the Mexican government was deprived of "money or property"
5 within the meaning of the wire fraud statute. See *Pasquantino*, No. 03-
6 725. The Second Superseding Indictment alleges that the government of
7 Mexico was deprived of the payment of its 101.1% tariff upon red and
8 golden delicious apples imported into Mexico from the United States. The
9 right to collect the tariff is "an entitlement to collect money from
10 [the defendants], the possession of which is 'something of value' to the"
11 government of Mexico. *Pasquantino* (quoting *McNally v. United States*, 483
12 U.S. 350, 358 (1987) (internal quotation marks omitted)). Accordingly,
13 Defendants' motion is denied in part.

14 Defendants also argued it was unconstitutional for a federal wire
15 fraud statute to criminalize conduct violating a foreign law. The Court
16 denies the Defendants' motion finding that the United States is not
17 barred from prosecuting a fraudulent scheme to evade foreign tariffs.
18 See *Pasquantino*.

19 Accordingly, **IT IS HEREBY ORDERED:**

20 1. Defendant Bertha's Marketing and Bertha Manzo's Motion to
21 Dismiss Case, (**NO. CR-03-2225-EFS: Ct. Rec. 42; NO. CR-03-2226-EFS: Ct.**
22 **Rec. 41**), is **DENIED**.

23 2. The **Pretrial Conference** is **SET** for **May 4, 2005**, at **9:30 a.m.**
24 in **Richland**, Washington.

3. The jury trial is SET for May 9, 2005, at 9:00 a.m. in Richland, Washington. Counsel shall meet with the Court in Chambers at 8:15 a.m. on the day of trial.

4. Trial briefs, requested voir dire, and joint proposed jury instructions shall be filed and served **NO LATER THAN May 5, 2005**. Joint jury instructions should only address issues that are unique to this case, and shall include instructions regarding the elements of each claim or defense, and a proposed verdict form.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and to provide copies to all counsel, the U.S. Probation Office, and the Jury Administrator.

DATED this 28th day of April, 2005.

S/ Edward F. Shea
EDWARD F. SHEA
United States District Judge

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